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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	CR. F. NO. 02-5301 OWW
)	
Plaintiff,)	
)	
v.)	GOVERNMENT'S RESPONSE TO
)	DEFENDANT BOWCUT'S SENTENCING
)	MEMORANDUM AND FORMAL
)	OBJECTIONS TO PRESENTENCE
)	REPORT
LESLIE PETER BOWCUT,)	
)	
)	DATE: August 22, 2005
Defendant.)	TIME: 1:30 p.m.
)	PLACE: Courtroom Two

Honorable Oliver W. Wanger

The government is in receipt of defendant Leslie Peter Bowcut's sentencing memorandum and formal sentencing objections filed August 16, 2005. The government hereby responds to the issues raised in the sentencing memorandum.

1. Federal Sentencing Guidelines.

As noted during previous sentencing hearings related to this case, the government agrees that the Guidelines are advisory in nature and are no longer binding upon this court. The government contends that this Court still must consult the

1 Federal Sentencing Guidelines (as promulgated by the Sentencing
2 Commission pursuant to the Sentencing Reform Act of 1984, 18
3 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and as modified by
4 United States v. Booker and United States v. Fanfan, 2005 WL
5 50108 (Jan. 12, 2005)), and must take them into account when
6 determining a final sentence.
7

8 2. The Plea Agreement.

9 At paragraph 3(e) of the plea agreement the defendant agrees
10 "not to oppose the government's recommendation that he serve 210
11 months in custody." The defendant carefully notes that it is not
12 his "intention or desire" to violate his plea agreement." He
13 argues, however, that he is no longer bound by his agreement due
14 to the government's recommendation of a 180, as compared to 210,
15 month sentence.
16

17 The government recognizes that the defense request for a
18 sentence below 210, or 180, months is made in good faith. The
19 request, however, is not supported by the clear language of the
20 plea agreement. Additionally, given the nature of the
21 defendant's conduct in this case, as well as the resulting harm
22 to those impacted by that conduct, a sentence of 210 months is
23 reasonable. Considering the position of the government that the
24 court reduce that sentence to 180¹ months based solely upon the
25 defendant's assistance in this case, any lesser sentence would
26 result in a miscarriage of justice.
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28 _____
¹ The government does agree that the defendant should receive credit for the time spent in custody for this offense.

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3 The plea agreement is unambiguous. According to paragraph
4 3(c) of the agreement, "the defendant agrees not to oppose the
5 government's request that he be sentenced at the top of the
6 applicable guideline range in order to accomplish a sentence of
7 210 months." That clause clearly allows the government to
8 request, and at the same time obligates the defendant not to
9 oppose, a sentence of 210 months.
10

11 The defendant argues, however, that since the government has
12 now agreed to recommend a sentence of 180 months, he is no longer
13 bound by his agreement related to the 210 month sentence. That
14 argument is misplaced.
15

16 The plea agreement actually contemplated a reduced sentence
17 recommendation by the government. Within paragraph 3(c), the
18 parties agreed that, "the 210 month recommendation will be
19 reduced to 180 months, and may ultimately be reduced to 150
20 months, at the discretion of the government, pursuant to Rule 35
21 of the Federal Rules of Criminal Procedure, based upon the
22 continued cooperation of the defendant..."
23

24 The plea agreement addressed the possibility of a sentence
25 recommendation of 180 months pursuant to Rule 35. The agreement
26 also obligated the defendant not to object to either the 210
27 month, or 180 month, recommendation. The defendant's arguments
28 to the contrary are defeated by that language and should be
denied by this court.

1
2 4. Offense Conduct.

3 Besides the unambiguous language of the plea agreement, the
4 defendant's offense conduct demands a sentence of at least 180
5 months. The plea agreement details the defendant's conduct in
6 this case. The agreement establishes the defendant's
7 participation in a world-wide conspiracy to sexually exploit
8 children in the care of their fathers. One of the fathers most
9 significantly involved in exploiting his own children was
10 defendant Bowcut.
11

12 Within the confines of this pleading it is impossible to
13 accurately portray the sexual exploitation depicted in the images
14 that were produced by defendant Bowcut. The government,
15 therefore, submits under seal a CD containing those images for
16 the court's consideration. The same images are described in the
17 pre-sentence report. The images depict nothing less than the
18 most extreme acts of child exploitation by the defendant upon his
19 own children. Those acts standing alone warrant the sentence
20 recommended by the probation officer. Considering the fact that,
21 besides committing the acts and taking the pictures, the
22 defendant shared those images with others by transmitting them
23 via the Internet, and thereby victimized his children for years
24 to come, the reasonableness of such sentence is established
25 without question.
26
27
28

1 This court is familiar with the charged conspiracy, having
2 heard two trials involving this same conspiracy. Simply put, the
3 conspiracy involved nothing less than vile and reprehensible
4 conduct by each defendant resulting in the perpetual
5 victimization of the children depicted in the offending
6 photographs. Such perpetual victimization is established by the
7 fact that many photos involved in this case are appearing in
8 unrelated child exploitation cases currently be prosecuted by
9 this office.
10

11 5. Request to Participate in Sex Offender Counseling.

12 The defendant justifies his request for a reduced sentence
13 based upon his claim that he should participate in the sex
14 offender treatment program offered at FCI-Butner. While the
15 government agrees that treatment may be beneficial to the
16 defendant, a reduced sentence is not necessary to accomplish that
17 goal. As the defendant notes in his motion, an individual
18 becomes eligible for the sex offender treatment program within
19 the last three years of their federal sentence. The government
20 is not aware of a maximum sentence requirement for the program;
21 it appears the defendant will become eligible to participate in
22 the program no matter the length of his sentence. There is no
23 need, therefore, for any artificial reduction in the defendant's
24 sentence in order to make him eligible for treatment.
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1 6. Statutory Minimum.

2 As set forth above, a sentence of 210 months is reasonable
3 and justified for defendant Bowcut. As noted below, the
4 government will recommend that the defendant be sentenced to a
5 180 month term of imprisonment based upon his continued
6 cooperation. Setting aside all other considerations, however,
7 the statutory minimum for the offense of conviction is ten years.
8 (See, Title 18, United States Code, Sections 2251(a) and (d)
9 (2002 version).) The defendant's request for a sentence of
10 approximately 3.5 years, therefore, is prevented by the
11 sentencing language of Section 2251.
12

13 7. Defendant's Cooperation.

14 As noted, the government represented in the plea agreement
15 that, based upon the defendant's cooperation, it would recommend
16 that the defendant receive a 180 month, as compared to 210 month,
17 sentence. The government hereby makes such recommendation. So
18 as to preserve existing investigations, the government will
19 detail such cooperation at the sentencing hearing. It should be
20 noted that the federal sentence does not impact the previously
21 imposed 30 year to life sentence imposed based upon the
22 defendant's Idaho conviction. Additionally, the United States
23 makes the recommendation for a 180 month sentence based in part
24 upon its belief that the defendant's 30 year to life sentence
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1 will not be altered in the future. The defendant's cooperation
2 in this federal case does not warrant a reduction in his state
3 sentence.
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8

9 MCGREGOR W. SCOTT
10 United States Attorney

11 DATED: August 18, 2005_

By /s/ Jonathan B. Conklin
12 JONATHAN B. CONKLIN
13 Assistant U.S. Attorney
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15 DATED: August 18, 2005

By, /s/ David L. Gappa
16 DAVID L. GAPPA
17 Assistant U.S. Attorney
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